IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GNAMES ADVANTAGE, L.P. :
v. :
CPC ASSOCIATES, INC. and ACXIOM CORP. : NO. 00-CV-4032

MEMORANDUM and ORDER

McLaughlin, J. September 20, 2002

CPC Associates ("CPC") and Acxiom Corporation ("Acxiom") began negotiating a contract in early 1998 to sell and buy compiled lists of names for direct marketing purposes. Gnames Advantage ("Gnames"), which provides list brokering services, alleges that it introduced the companies to each other and helped facilitate their negotiation process. These negotiations culminated in a contract executed directly between Defendants CPC and Acxiom in December 1999. Gnames claims that it acted as a list broker for the transaction and is due a commission of 20 percent of the revenue for the life of the contract.

Initially, Gnames sued CPC only, claiming breach of contract and unjust enrichment/quantum meruit. After discovery, Gnames moved to amend the complaint to add Acxiom as a defendant on the theory that the company has been unjustly enriched because it benefitted from the plaintiff's brokerage services. Acxiom has moved to dismiss the amended complaint or, in the alternative, for summary judgment. The Court will grant the motion.

I. The Complaint

Plaintiff Gnames is, among other things, a list broker for companies that buy and sell compilations of names. A list broker is an intermediary between a list seller, which compiles and markets the lists, and the list buyer which, as the name implies, purchases them. List brokers customarily retain a percentage of the amount the list buyer pays to the list seller as a commission. This arrangement is tantamount to having the list sellers, who derive a profit from the broker's activities in bringing the parties together, pay the broker's commission.

In this action, Gnames sues CPC, a list seller, for a commission Gnames claimed it earned by brokering a contract between CPC and list buyer Acxiom. The initial complaint alleges that, in early 1998, Gnames President Robert Perez introduced David Lewis, principal of CPC, to Donald Hinman, an employee of Acxiom. It further states that Acxiom and CPC engaged in negotiations concerning a potential contract by which CPC would sell lists to Acxiom over the next two years.

Gnames claims that Mr. Perez played an important role by bringing the parties together, arranging and participating in conference calls and meetings between the principles, and helping to work out various issues that arose during the course of the negotiations. Its complaint contends that it did not enter into a written agreement with CPC because list broker agreements are typically oral and the terms of Gnames' contract with CPC were established during the course of their business relationship.

Gnames claims that, in February 2000, it learned that CPC had signed a contract with Acxiom without including it or paying it a commission. Mr. Perez called Mr. Lewis and told him Gnames was entitled to a 20 percent commission on the total contract between CPC and Acxiom. Mr. Lewis refused to pay this commission, stating that Gnames had acted as a facilitator or finder for the companies and should be compensated as such at a lower rate.

Gnames then filed this lawsuit in August 2000 alleging, among other things, claims for breach of contract, fraud and unjust enrichment against CPC. It joined Acxiom as a party in its amended complaint in January 2002. The Second Amended Complaint contains one claim against Acxiom for unjust enrichment.

II. Analysis

Gnames claims (1) that CPC breached an express agreement to pay it a commission for services it provided in brokering a contract between CPC and Acxiom and (2) that Acxiom was unjustly enriched because it was the beneficiary of those brokerage services. The Court holds that the complaint does not state a claim against Acxiom for unjust enrichment because it does not allege that Acxiom misled the plaintiff in connection with the alleged contract between Gnames and CPC.

In Meehan v. Cheltenham Twp., 189 A.2d 593 (Pa. 1963), the Pennsylvania Supreme Court adopted Restatement of Restitution § 110, which provides:

> Restitution From Beneficiary Of a Contract With Third Person Who Has Failed To Perform. A person who has conferred a benefit upon another as the performance of a contract with a third person is not entitled to restitution from the other merely because of the failure of performance by the third person.

The plaintiff in Meehan was a subcontractor who paved streets and installed sewers for a private developer who later became insolvent. When the developer could not pay its debt under their contract, the subcontractor sued the township where the work was done under an unjust enrichment theory, claiming that the municipality benefitted from its work by obtaining dedicated streets and sewers at no cost.

The Court found the defendant in Meehan was enriched but found no injustice in its enrichment because the defendant had not induced the plaintiff into conferring the benefits. "In such a situation, appellant cannot shift the loss resulting from its error in judgment to one who may have been indirectly benefited (sic) by the performance of these services." Id. Thus, the Court affirmed the claim's dismissal on preliminary objections, See also D.A. Hill Co. v. Clevetrust Realty, 573 A.2d 1005, 1010 (Pa. 1990) (finding a lending institution was not unjustly enriched by subcontractors when the lender foreclosed on a mall subcontractors worked on and their work was not fully paid for by the contractor); Kemp v. Majestic Amusement Co., 234 A.2d 846, 848 (Pa. 1967) (finding defendant that received benefits from plaintiff was not unjustly enriched because the plaintiff entered a contract relying solely on the financial credit of another company and defendant did not induce plaintiff to do so); Deem v. Lockheed Corp., No. 87 Civ. 7017 (S.D.N.Y. Sept. 25, 1991) (granting summary judgment against plaintiff on an unjust enrichment claim where there was no evidence that defendant misled plaintiffs or encouraged a contracting party to avoid its contractual obligations).

The Court must evaluate the complaint against these principles. The complaint must allege facts that make out every element of the claim; the Court cannot accept allegations that are conclusory. General Motors Corp. v. The New A.C. Chevrolet, 263 F.3d 296, 333 (3d Cir. 2001).

Gnames alleges facts indicating that it did work to bring Acxiom and CPC together and that Acxiom benefitted from the resulting contract. Gnames does not allege facts, however, that would make it unjust for Acxiom to retain the benefits conferred without compensating Gnames. The closest this complaint comes to making any factual allegations of wrongdoing by Acxiom is in its claims that Acxiom did not tell Gnames that it intended to contract directly with CPC and that Gnames would not be paid any commission. But there are no facts alleged that Gnames ever asked Acxiom about its or CPC's intentions regarding the contract, that Acxiom chose to actively conceal information from Gnames, that Acxiom ever made any statements about CPC's intentions, or that Gnames relied upon any assurances that Acxiom gave it concerning the contract.

Under these circumstances, the Court finds that the complaint does not allege facts sufficient to support a claim against Acxiom for unjust enrichment.

Even if the Court were to go beyond the complaint and consider Acxiom's motion as one for summary judgment, it would still grant the motion. Although, in its opposition to the motion, the plaintiff does not explicitly argue the summary judgment standard, it does rely on the testimony of Donald Hinman, an Acxiom employee. Mr. Hinman's testimony, however, supports Acxiom's position that it never misled the plaintiff. Mr. Hinman testified that it would not have been unusual for a person in Mr. Perez's position to receive a referral or "matchmaker" fee, but he stressed that Acxiom had never discussed or agreed to pay such a fee to Mr. Perez at any time. Hinman Depo. at 91-92, 151-53. Mr. Hinman further testified that during the negotiations leading up to the contract with CPC, he was unaware of Mr. Perez's role, but assumed that, in accordance with industry custom, CPC might pay him a finder's or matchmaker's fee if a contract resulted. Id. at 88, 91-92.

Mr. Hinman learned that Mr. Perez had no agreement for payment with CPC only after the agreement was signed. Id. at 91. Mr. Hinman spoke to his counterpart at CPC to try to avoid litigation. To this end, Hinman proposed that Acxiom would be willing to pay half of the finder's fee (five percent of the revenues for the first year of the contract) to settle the dispute, with the understanding that CPC would contribute a like amount. Id. at 153-54. Mr. Hinman told CPC that Acxiom was making this offer though it had made no agreement to do so, and did not believe that it owed Gnames anything. Id. at 91.

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ORDER

AND NOW, this 20th day of September, 2002, upon consideration of Defendant Acxiom Corporation's Motion to Dismiss (Docket #27), the Plaintiff's Opposition thereto (Docket #34), and Defendant Acxiom Corporation's Reply (Docket #35), it is hereby Ordered and Decreed that said motion is granted. The plaintiff's claim against defendant Acxiom Corporation is dismissed.

BY THE COURT:

Mary A. McLaughlin

MARY A. MCLAUGHLIN, J.

faxed 9/20/02:
John McShea, Esq.
Derek Brasiero, Esq.
Matthew Podolnick, Esq.
Stephen Weaver, Esq.